

HOUSE BILL NO. 467

INTRODUCED BY K. PETERSON, LIND, WANZENRIED, ESSMANN

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA MEDICAL LEGAL PANEL ACT; CLARIFYING THAT CLAIMS AGAINST HEALTH CARE PROVIDERS IN CERTAIN GOVERNMENTAL INFIRMARIES ARE NOT SUBJECT TO THE PROVISIONS OF THE ACT; INCLUDING TELEMEDICINE PHYSICIANS UNDER THE PROVISIONS OF THE ACT; ~~AND~~ AMENDING SECTION 27-6-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-6-103, MCA, is amended to read:

"27-6-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Dentist" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the assessment:

- (i) has as the individual's principal residence or place of dental practice the state of Montana;
- (ii) is not employed full-time by any federal governmental agency or entity; and
- (iii) is not fully retired from the practice of dentistry; or

(b) for all other purposes, a person licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the occurrence of the incident giving rise to the claim:

- (i) was an individual who had as the principal residence or place of dental practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or
- (ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render dental services and whose shareholders, partners, or owners were individual dentists licensed to practice dentistry under the provisions of Title 37, chapter 4.

(2) (a) "Health care facility" means a facility, ~~other than a governmental infirmary but including a university or college infirmary,~~ licensed as a health care facility under Title 50, chapter 5.

(b) For the purposes of this chapter, a health care facility does not include:

- (i) an end-stage renal dialysis facility;

- 1 (ii) a home infusion therapy agency; ~~or;~~
- 2 (iii) a residential care facility; or
- 3 (iv) a governmental infirmary, except a university or college infirmary.
- 4 (3) "Health care provider" means a physician, a dentist, a podiatrist, or a health care facility.
- 5 (4) "Hospital" means a hospital as defined in 50-5-101.
- 6 (5) "Malpractice claim" means a claim or potential claim of a claimant against a health care provider for
- 7 medical or dental treatment, lack of medical or dental treatment, or other alleged departure from accepted
- 8 standards of health care that proximately results in damage to the claimant, whether the claimant's claim or
- 9 potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.
- 10 (6) "Panel" means the Montana medical legal panel provided for in 27-6-104.
- 11 (7) "Physician" means:
- 12 (a) for purposes of the assessment of the annual surcharge, an individual licensed to practice medicine
- 13 under the provisions of Title 37, chapter 3, who at the time of the assessment:
- 14 (i) has as the individual's principal residence or place of medical practice the state of Montana or
- 15 practices telemedicine as defined in 37-3-342;
- 16 (ii) is not employed full-time by any federal governmental agency or entity; and
- 17 (iii) is not fully retired from the practice of medicine; or
- 18 (b) for all other purposes, a person licensed to practice medicine under the provisions of Title 37, chapter
- 19 3, who at the time of the occurrence of the incident giving rise to the claim:
- 20 (i) was an individual who had as the principal residence or place of medical practice the state of Montana
- 21 or practiced telemedicine as defined in 37-3-342 and was not employed full-time by any federal governmental
- 22 agency or entity; or
- 23 (ii) was a professional service corporation, partnership, or other business entity organized under the laws
- 24 of any state to render medical services and whose shareholders, partners, or owners were individual physicians
- 25 licensed to practice medicine under the provisions of Title 37, chapter 3.
- 26 (8) "Podiatrist" means:
- 27 (a) for purposes of the assessment of the annual surcharge, an individual licensed to practice podiatry
- 28 under the provisions of Title 37, chapter 6, who at the time of the assessment:
- 29 (i) has as the individual's principal residence or place of podiatric practice the state of Montana;
- 30 (ii) is not employed full-time by any federal governmental agency or entity; and

- 1 (iii) is not fully retired from the practice of podiatry; or
- 2 (b) for all other purposes, a person licensed to practice podiatry under the provisions of Title 37, chapter
- 3 6, who at the time of the occurrence of the incident giving rise to the claim:
- 4 (i) was an individual who had as the principal residence or place of podiatric practice the state of
- 5 Montana and was not employed full-time by any federal governmental agency or entity; or
- 6 (ii) was a professional service corporation, partnership, or other business entity organized under the laws
- 7 of any state to render podiatric services and whose shareholders, partners, or owners were individual podiatrists
- 8 licensed to practice podiatry under the provisions of Title 37, chapter 6."

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10 **Section 2.** Section 27-6-105, MCA, is amended to read:

11 **"27-6-105. What claims panel to review -- ~~exclusion from jurisdiction of panel~~ EXCEPTIONS. (1)**

12 The panel shall review all malpractice claims or potential claims against health care providers covered by this

13 chapter except:

14 ~~(a)(1)~~ those claims subject to a valid arbitration agreement allowed by law or upon which suit has been

15 filed prior to April 19, 1977; and

16 ~~(b) those claims subject to the provision of subsection (2).~~

17 ~~———— (2) For purposes of this chapter, a claim against an individual health care provider who provides health~~

18 ~~care in a governmental infirmary is considered a claim against the governmental infirmary. A claim against a~~

19 ~~governmental infirmary, except a university or college infirmary, is not subject to the jurisdiction of the panel and~~

20 ~~must be brought under the provisions of Title 2, chapter 9~~

21 ~~(2) A CLAIM BROUGHT BY AN INMATE OF A CORRECTIONAL FACILITY AGAINST A HEALTH CARE PROVIDER ARISING~~

22 ~~FROM A HEALTH CARE SERVICE PROVIDED BY THE HEALTH CARE PROVIDER IN A GOVERNMENTAL INFIRMARY LOCATED AT~~

23 ~~WITHIN THE FACILITY."~~

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25 **NEW SECTION. SECTION 3. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.**

26 - END -